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HOUSE BILL 1827

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State of Washington                      59th Legislature                      2005 Regular Session

By Representatives Wood, Condotta, McCoy, Crouse and Conway

Read first time 02/07/2005. Referred to Committee on Commerce & Labor.

1            AN ACT Relating to financing practices of motor vehicle dealers;  
2 and amending RCW 46.70.180.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4            **Sec. 1.** RCW 46.70.180 and 2003 c 368 s 1 are each amended to read  
5 as follows:

6            Each of the following acts or practices is unlawful:

7            (1) To cause or permit to be advertised, printed, displayed,  
8 published, distributed, broadcasted, televised, or disseminated in any  
9 manner whatsoever, any statement or representation with regard to the  
10 sale, lease, or financing of a vehicle which is false, deceptive, or  
11 misleading, including but not limited to the following:

12            (a) That no down payment is required in connection with the sale of  
13 a vehicle when a down payment is in fact required, or that a vehicle  
14 may be purchased for a smaller down payment than is actually required;

15            (b) That a certain percentage of the sale price of a vehicle may be  
16 financed when such financing is not offered in a single document  
17 evidencing the entire security transaction;

18            (c) That a certain percentage is the amount of the service charge

1 to be charged for financing, without stating whether this percentage  
2 charge is a monthly amount or an amount to be charged per year;

3 (d) That a new vehicle will be sold for a certain amount above or  
4 below cost without computing cost as the exact amount of the factory  
5 invoice on the specific vehicle to be sold;

6 (e) That a vehicle will be sold upon a monthly payment of a certain  
7 amount, without including in the statement the number of payments of  
8 that same amount which are required to liquidate the unpaid purchase  
9 price.

10 (2)(a) To incorporate within the terms of any purchase and sale or  
11 lease agreement any statement or representation with regard to the  
12 sale, lease, or financing of a vehicle which is false, deceptive, or  
13 misleading, including but not limited to terms that include as an added  
14 cost to the selling price or capitalized cost of a vehicle an amount  
15 for licensing or transfer of title of that vehicle which is not  
16 actually due to the state, unless such amount has in fact been paid by  
17 the dealer prior to such sale. However, an amount not to exceed  
18 thirty-five dollars per vehicle sale or lease may be charged by a  
19 dealer to recover administrative costs for collecting motor vehicle  
20 excise taxes, licensing and registration fees and other agency fees,  
21 verifying and clearing titles, transferring titles, perfecting,  
22 releasing, or satisfying liens or other security interests, and other  
23 administrative and documentary services rendered by a dealer in  
24 connection with the sale or lease of a vehicle and in carrying out the  
25 requirements of this chapter or any other provisions of state law.

26 (b) A dealer may charge the documentary service fee in (a) of this  
27 subsection under the following conditions:

28 (i) The documentary service fee is disclosed in writing to a  
29 prospective purchaser or lessee before the execution of a purchase and  
30 sale or lease agreement;

31 (ii) The documentary service fee is not represented to the  
32 purchaser or lessee as a fee or charge required by the state to be paid  
33 by either the dealer or prospective purchaser or lessee;

34 (iii) The documentary service fee is separately designated from the  
35 selling price or capitalized cost of the vehicle and from any other  
36 taxes, fees, or charges; and

37 (iv) Dealers disclose in any advertisement that a documentary

1 service fee in an amount up to thirty-five dollars may be added to the  
2 sale price or the capitalized cost.

3 For the purposes of this subsection (2), the term "documentary  
4 service fee" means the optional amount charged by a dealer to provide  
5 the services specified in (a) of this subsection.

6 (3) To set up, promote, or aid in the promotion of a plan by which  
7 vehicles are to be sold or leased to a person for a consideration and  
8 upon further consideration that the purchaser or lessee agrees to  
9 secure one or more persons to participate in the plan by respectively  
10 making a similar purchase and in turn agreeing to secure one or more  
11 persons likewise to join in said plan, each purchaser or lessee being  
12 given the right to secure money, credits, goods, or something of value,  
13 depending upon the number of persons joining the plan.

14 (4) To commit, allow, or ratify any act of "bushing" which is  
15 defined as follows: ~~((Taking from a prospective buyer or lessee of a  
16 vehicle a written order or offer to purchase or lease, or))~~ Entering  
17 into a contract document signed by the buyer or lessee, which:

18 (a) Is subject to (i) the dealer's, or his or her authorized  
19 representative's future acceptance, or (ii) is conditioned on the  
20 dealer approving a financing condition in the contract document, or  
21 (iii) is conditioned on the dealer obtaining from a bank or other  
22 lender or leasing company, approval of financing or approval of the  
23 lease for the buyer or lessee, and the dealer fails or refuses within  
24 three calendar days, exclusive of Saturday, Sunday, or legal holiday,  
25 and prior to any further negotiations with said buyer or lessee, either  
26 (i) to ((deliver to)) inform the buyer or lessee of the dealer's  
27 ((signed)) final acceptance or the satisfaction of the financing  
28 condition or lease approval, or (ii) to inform the buyer or lessee that  
29 the dealer rejects the contract or that the financing or the lease was  
30 not so approved (thereby automatically voiding the ((order, offer, or))  
31 contract document) and tender the return of any initial payment or  
32 security made or given by the buyer or lessee, including but not  
33 limited to money, check, promissory note, vehicle keys, a trade-in, or  
34 certificate of title to a trade-in(~~;-or~~)).

35 The provisions of (a) of this subsection do not impair, prejudice,  
36 or abrogate the rights of a dealer to assert a claim against the buyer  
37 or lessee for misrepresentation or breach of contract and to exercise  
38 all remedies available at law or in equity, including those under

1 chapter 62A.9A RCW, if the dealer, bank, or other lender or leasing  
2 company discovers that approval of the contract or financing or  
3 approval of the lease was based upon material misrepresentations made  
4 by the buyer or lessee, including but not limited to,  
5 misrepresentations regarding income, employment, or debt of the buyer  
6 or lessee so long as the dealer, or his or her staff, has not, with  
7 knowledge of the material misrepresentation, aided, assisted,  
8 encouraged, or participated, directly or indirectly, in the  
9 misrepresentation.

10 (b) Permits the dealer to renegotiate a dollar amount specified as  
11 trade-in allowance on a vehicle delivered or to be delivered by the  
12 buyer or lessee as part of the purchase price or lease, for any reason  
13 except:

14 (i) Failure to disclose in writing that the vehicle's certificate  
15 of ownership has been branded for any reason, including, but not  
16 limited to, status as a rebuilt vehicle as provided in RCW 46.12.050  
17 and 46.12.075; or

18 (ii) Substantial physical damage or latent mechanical defect  
19 occurring before the dealer took possession of the vehicle and which  
20 could not have been reasonably discoverable at the time of the taking  
21 of the order, offer, or contract; or

22 (iii) Excessive additional miles or a discrepancy in the mileage.  
23 "Excessive additional miles" means the addition of five hundred miles  
24 or more, as reflected on the vehicle's odometer, between the time the  
25 vehicle was first valued by the dealer for purposes of determining its  
26 trade-in value and the time of actual delivery of the vehicle to the  
27 dealer. "A discrepancy in the mileage" means (A) a discrepancy between  
28 the mileage reflected on the vehicle's odometer and the stated mileage  
29 on the signed odometer statement; or (B) a discrepancy between the  
30 mileage stated on the signed odometer statement and the actual mileage  
31 on the vehicle; or

32 (c) Fails to comply with the obligation of any written warranty or  
33 guarantee given by the dealer requiring the furnishing of services or  
34 repairs within a reasonable time.

35 (5) To commit any offense relating to odometers, as such offenses  
36 are defined in RCW 46.37.540, 46.37.550, 46.37.560, and 46.37.570. A  
37 violation of this subsection is a class C felony punishable under  
38 chapter 9A.20 RCW.

1 (6) For any vehicle dealer or vehicle salesperson to refuse to  
2 furnish, upon request of a prospective purchaser or lessee, for  
3 vehicles previously registered to a business or governmental entity,  
4 the name and address of the business or governmental entity.

5 (7) To commit any other offense under RCW 46.37.423, 46.37.424, or  
6 46.37.425.

7 (8) To commit any offense relating to a dealer's temporary license  
8 permit, including but not limited to failure to properly complete each  
9 such permit, or the issuance of more than one such permit on any one  
10 vehicle. However, a dealer may issue a second temporary permit on a  
11 vehicle if the following conditions are met:

12 (a) The lienholder fails to deliver the vehicle title to the dealer  
13 within the required time period;

14 (b) The dealer has satisfied the lien; and

15 (c) The dealer has proof that payment of the lien was made within  
16 two calendar days, exclusive of Saturday, Sunday, or a legal holiday,  
17 after the sales contract has been executed by all parties and all  
18 conditions and contingencies in the sales contract have been met or  
19 otherwise satisfied.

20 (9) For a dealer, salesperson, or mobile home manufacturer, having  
21 taken an instrument or cash "on deposit" from a purchaser or lessee  
22 prior to the delivery of the bargained-for vehicle, to commingle the  
23 "on deposit" funds with assets of the dealer, salesperson, or mobile  
24 home manufacturer instead of holding the "on deposit" funds as trustee  
25 in a separate trust account until the purchaser or lessee has taken  
26 delivery of the bargained-for vehicle. Delivery of a manufactured home  
27 shall be deemed to occur in accordance with RCW 46.70.135(5). Failure,  
28 immediately upon receipt, to endorse "on deposit" instruments to such  
29 a trust account, or to set aside "on deposit" cash for deposit in such  
30 trust account, and failure to deposit such instruments or cash in such  
31 trust account by the close of banking hours on the day following  
32 receipt thereof, shall be evidence of intent to commit this unlawful  
33 practice: PROVIDED, HOWEVER, That a motor vehicle dealer may keep a  
34 separate trust account which equals his or her customary total customer  
35 deposits for vehicles for future delivery. For purposes of this  
36 section, "on deposit" funds received from a purchaser of a manufactured  
37 home means those funds that a seller requires a purchaser to advance

1 before ordering the manufactured home, but does not include any loan  
2 proceeds or moneys that might have been paid on an installment  
3 contract.

4 (10) For a dealer or manufacturer to fail to comply with the  
5 obligations of any written warranty or guarantee given by the dealer or  
6 manufacturer requiring the furnishing of goods and services or repairs  
7 within a reasonable period of time, or to fail to furnish to a  
8 purchaser or lessee, all parts which attach to the manufactured unit  
9 including but not limited to the undercarriage, and all items specified  
10 in the terms of a sales or lease agreement signed by the seller and  
11 buyer or lessee.

12 (11) For a vehicle dealer to pay to or receive from any person,  
13 firm, partnership, association, or corporation acting, either directly  
14 or through a subsidiary, as a buyer's agent for consumers, any  
15 compensation, fee, purchase moneys or funds that have been deposited  
16 into or withdrawn out of any account controlled or used by any buyer's  
17 agent, gratuity, or reward in connection with the purchase, sale, or  
18 lease of a new motor vehicle.

19 (12) For a buyer's agent, acting directly or through a subsidiary,  
20 to pay to or to receive from any motor vehicle dealer any compensation,  
21 fee, gratuity, or reward in connection with the purchase, sale, or  
22 lease of a new motor vehicle. In addition, it is unlawful for any  
23 buyer's agent to engage in any of the following acts on behalf of or in  
24 the name of the consumer:

25 (a) Receiving or paying any purchase moneys or funds into or out of  
26 any account controlled or used by any buyer's agent;

27 (b) Signing any vehicle purchase orders, sales contracts, leases,  
28 odometer statements, or title documents, or having the name of the  
29 buyer's agent appear on the vehicle purchase order, sales contract,  
30 lease, or title; or

31 (c) Signing any other documentation relating to the purchase, sale,  
32 lease, or transfer of any new motor vehicle.

33 It is unlawful for a buyer's agent to use a power of attorney  
34 obtained from the consumer to accomplish or effect the purchase, sale,  
35 lease, or transfer of ownership documents of any new motor vehicle by  
36 any means which would otherwise be prohibited under (a) through (c) of  
37 this subsection. However, the buyer's agent may use a power of

1 attorney for physical delivery of motor vehicle license plates to the  
2 consumer.

3 Further, it is unlawful for a buyer's agent to engage in any false,  
4 deceptive, or misleading advertising, disseminated in any manner  
5 whatsoever, including but not limited to making any claim or statement  
6 that the buyer's agent offers, obtains, or guarantees the lowest price  
7 on any motor vehicle or words to similar effect.

8 (13) For a buyer's agent to arrange for or to negotiate the  
9 purchase, or both, of a new motor vehicle through an out-of-state  
10 dealer without disclosing in writing to the customer that the new  
11 vehicle would not be subject to chapter 19.118 RCW. This subsection  
12 also applies to leased vehicles. In addition, it is unlawful for any  
13 buyer's agent to fail to have a written agreement with the customer  
14 that: (a) Sets forth the terms of the parties' agreement; (b)  
15 discloses to the customer the total amount of any fees or other  
16 compensation being paid by the customer to the buyer's agent for the  
17 agent's services; and (c) further discloses whether the fee or any  
18 portion of the fee is refundable.

19 (14) Being a manufacturer, other than a motorcycle manufacturer  
20 governed by chapter (~~46.94~~) 46.93 RCW, to:

21 (a) Coerce or attempt to coerce any vehicle dealer to order or  
22 accept delivery of any vehicle or vehicles, parts or accessories, or  
23 any other commodities which have not been voluntarily ordered by the  
24 vehicle dealer: PROVIDED, That recommendation, endorsement,  
25 exposition, persuasion, urging, or argument are not deemed to  
26 constitute coercion;

27 (b) Cancel or fail to renew the franchise or selling agreement of  
28 any vehicle dealer doing business in this state without fairly  
29 compensating the dealer at a fair going business value for his or her  
30 capital investment which shall include but not be limited to tools,  
31 equipment, and parts inventory possessed by the dealer on the day he or  
32 she is notified of such cancellation or termination and which are still  
33 within the dealer's possession on the day the cancellation or  
34 termination is effective, if: (i) The capital investment has been  
35 entered into with reasonable and prudent business judgment for the  
36 purpose of fulfilling the franchise; and (ii) the cancellation or  
37 nonrenewal was not done in good faith. Good faith is defined as the  
38 duty of each party to any franchise to act in a fair and equitable

1 manner towards each other, so as to guarantee one party freedom from  
2 coercion, intimidation, or threats of coercion or intimidation from the  
3 other party: PROVIDED, That recommendation, endorsement, exposition,  
4 persuasion, urging, or argument are not deemed to constitute a lack of  
5 good faith;

6 (c) Encourage, aid, abet, or teach a vehicle dealer to sell or  
7 lease vehicles through any false, deceptive, or misleading sales or  
8 financing practices including but not limited to those practices  
9 declared unlawful in this section;

10 (d) Coerce or attempt to coerce a vehicle dealer to engage in any  
11 practice forbidden in this section by either threats of actual  
12 cancellation or failure to renew the dealer's franchise agreement;

13 (e) Refuse to deliver any vehicle publicly advertised for immediate  
14 delivery to any duly licensed vehicle dealer having a franchise or  
15 contractual agreement for the retail sale or lease of new and unused  
16 vehicles sold or distributed by such manufacturer within sixty days  
17 after such dealer's order has been received in writing unless caused by  
18 inability to deliver because of shortage or curtailment of material,  
19 labor, transportation, or utility services, or by any labor or  
20 production difficulty, or by any cause beyond the reasonable control of  
21 the manufacturer;

22 (f) To provide under the terms of any warranty that a purchaser or  
23 lessee of any new or unused vehicle that has been sold or leased,  
24 distributed for sale or lease, or transferred into this state for  
25 resale or lease by the vehicle manufacturer may only make any warranty  
26 claim on any item included as an integral part of the vehicle against  
27 the manufacturer of that item.

28 Nothing in this section may be construed to impair the obligations  
29 of a contract or to prevent a manufacturer, distributor,  
30 representative, or any other person, whether or not licensed under this  
31 chapter, from requiring performance of a written contract entered into  
32 with any licensee hereunder, nor does the requirement of such  
33 performance constitute a violation of any of the provisions of this  
34 section if any such contract or the terms thereof requiring  
35 performance, have been freely entered into and executed between the  
36 contracting parties. This paragraph and subsection (14)(b) of this  
37 section do not apply to new motor vehicle manufacturers governed by  
38 chapter 46.96 RCW.

1           (15) Unlawful transfer of an ownership interest in a motor vehicle  
2 as defined in RCW 19.116.050.

3           (16) To knowingly and intentionally engage in collusion with a  
4 registered owner of a vehicle to repossess and return or resell the  
5 vehicle to the registered owner in an attempt to avoid a suspended  
6 license impound under chapter 46.55 RCW. However, compliance with  
7 chapter 62A.9A RCW in repossessing, selling, leasing, or otherwise  
8 disposing of the vehicle, including providing redemption rights to the  
9 debtor, is not a violation of this section.

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